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# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/361,385      | 07/26/1999  | EDWIN DANIEL PRATTS  |                     | 5453             |

7590 08/09/2004

PRATTS PARTNERSHIP LLC  
500 PROSPECT STREET  
LAKEWOOD, NJ 08701

EXAMINER

LAMBRECHT, CHRISTOPHER M

ART UNIT PAPER NUMBER

2611

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

09/361,385

Examiner

Christopher M. Lambrecht

Applicant(s)

PRATTS ET AL.

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 22 December 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

  
CHRIS GRANT  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

***Status of the Application***

1. Applicant's reply to the Office Action of 12/22/2003 was not received in the Patent and Trademark Office within the 6-month statutory period for reply set in the last Office Action. Since no time remains for applicant to obtain an extension of the period for reply by filing a petition under 37 CFR 1.136(a), this application is *abandoned*. Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

**A. Failure to reply was unavoidable.**

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the terminal disclaimer fee is required under 37 CFR 1.137(c) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part

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of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

**B. Failure to reply was unintentional.**

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c) (see above discussion); and (4) the petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

The required items and fees must be submitted promptly under a cover letter entitled “Petition to Revive.”

Further correspondence with respect to this matter should be addressed as follows:

By mail:                Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (703) 308-6916  
Attn: Office of Petitions

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By hand: Crystal Plaza 4, Room 3C23  
2201 South Clark Place  
Arlington, VA 22202

Telephone inquiries with respect to this matter should be directed to the Office of Petitions Staff  
at (703) 305-9282. For more detailed information, see MPEP § 711.03(c).

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### ***Conclusion***

2. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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P.O. Box 1450  
Alexandria, VA 22313-1450

on \_\_\_\_\_  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

### **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

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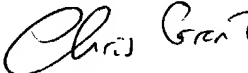
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Lambrecht whose telephone number is (703) 305-8710. The examiner can normally be reached on 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher M. Lambrecht  
Examiner  
Art Unit 2611

CML

  
CHRIS GRANT  
PRIMARY EXAMINER